

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW SARKISIAN, JOHN V. FELICE, JAMES C. SCHROER,
JOHN WILLIAMSON, RICHARD E. VAN HOUSE,
and THOM F. FOXLEE

MAILED

MAR 10 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-0389
Application No. 09/395,455

ON BRIEF

Before OWENS, BAHR, and LEVY, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-4, 6-8, 13-15, 17-21, 26-31 and 33. Claims 10 and 23, which are the only other pending claims, stand objected to as being dependent upon a rejected claim but allowable if rewritten in independent form.

THE INVENTION

The appellants claim a method of developing a brand profile for a new product such as an automobile. Claim 1 is illustrative:

1. A method of developing a brand profile for a new product comprising the steps of:

providing a predetermined plurality of product attributes each representing an identifiable feature of a generic product under consideration;

grouping said product attributes in response to customer-oriented market research;

placing each of said attributes in an attribute class corresponding to brand personality importance;

thereafter, generating a preferred product brand position as a function of said product attributes via a processor, including identifying a competitive set of products, and associating each of said product attributes with a preferred competitive level with respect to said competitive set; and

generating target product characteristics as a function of said classified product attributes and said preferred product brand position via said processor, said target product characteristics representing customer-driven objectives for each of said plurality of product attributes to be incorporated into said new product.

THE REFERENCES

E. Jerome McCarthy and William D. Perreault, Jr. (McCarthy), *Basic Marketing - A Global-Managerial Approach* 47 and 78-106 (Irwin 1993).

Howard Eisner, *Essentials of Project and Systems Engineering Management* 312-15 (John Wiley & Sons 1997).

Lee G. Cooper and Akihiro Inoue (Cooper), "Building market structures from consumer preferences" 33 *J. Mktg. Res.* 293 (Aug. 1996).¹

¹Citations herein to Cooper are to the page numbers of the reference of record obtained from a database.

THE REJECTIONS

The claims stand rejected as follows: claims 1-4, 6-8, 13-15, 17-21, 26 and 27 under 35 U.S.C. § 102(b) as anticipated by Cooper; claims 28-30 and 33 under 35 U.S.C. § 103 as obvious over Cooper in view of Eisner; and claim 31 under 35 U.S.C. § 103 as obvious over Cooper in view of Eisner and McCarthy.

OPINION

We reverse the aforementioned rejections. We need to address only the independent claims, i.e., claims 1, 13 and 28. Each of the independent claims requires a method of developing a brand profile for a new product, and claims 13 and 28 further require that the new product is an automobile. The independent claims all require grouping product attributes in response to customer-oriented market research, placing each of the attributes in an attribute class corresponding to brand personality importance, generating a preferred product brand position as a function of the product attributes, and generating target product characteristics as a function of the classified product attributes and the preferred product brand position, wherein the target product characteristics represent customer-driven objectives for each of a plurality of product attributes to be incorporated into the new product.

Cooper discloses a model that maps competitive market structures by using switching probabilities and attribute ratings to identify the preference structure of each consumer segment (abstract). Cooper points out that when consumers consider choices among a competitive group of automobiles, a consumer considering an expensive automobile may weigh attributes such as comfort or prestige, but neglect attributes such as economy, whereas a consumer considering an inexpensive automobile may evaluate attributes such as economy rather than prestige or sportiness (pages 1 and 3).

The examiner argues that Cooper's table 2 discloses a vehicle brand-attribute matrix based on customer-oriented market research (answer, page 11). That table discloses attributes, such as price, length and engine size, of various categories of cars such as subcompact/domestic and luxury domestic. The categories are not brands and there is no grouping of attributes in response to customer-oriented market research.

The examiner argues that each of the attributes at the top of Cooper's table 2 is an attribute class because each attribute may have many values, e.g., there may be many car lengths and engine sizes (answer, page 12). Each of the numbers in Cooper's table 2 is a particular value of the attribute set forth at the

top of the table. The particular numbers themselves are not attributes.

The examiner argues that Cooper's disclosures that consumers have different consideration sets of car brands and that a market can be divided into submarkets in which homogeneous consumers consider a distinctive subset of brands with a particular rule of attribute evaluation and reference to a specific ideal point (page 3) is a disclosure of generating preferred vehicle brand positions (answer, pages 13-14). The relied-upon portions of Cooper pertain to what consumers consider when they select a car. Those portions do not disclose generating a preferred brand position of a new car among competing cars.

For the above reasons we conclude that the examiner has not carried the burden of establishing a *prima facie* case of anticipation or obviousness of the appellants' claimed invention.²

DECISION

The rejections of claims 1-4, 6-8, 13-15, 17-21, 26 and 27 under 35 U.S.C. § 102(b) over Cooper, claims 28-30 and 33 under

²The examiner does not rely upon Eisner or McCarthy for any disclosure that remedies the above-discussed deficiency in Cooper.

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35 U.S.C. § 103 over Cooper in view of Eisner, and claim 31 under 35 U.S.C. § 103 over Cooper in view of Eisner and McCarthy, are reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

Terry J. Owens
TERRY J. OWENS)
Administrative Patent Judge)
)
Jen D. Bahr)
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